

No. 10-1280C277

Christian Randolph,
Plaintiff

v.

Martin J. Cirkiel, and
Cirkiel & Associates,
Defendants

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§
§

In The 277 Texas

Judicial District
For

Williamson County

Original Petition

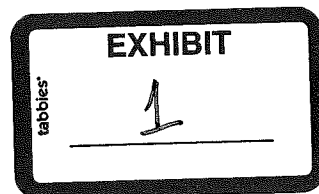
To the Honorable Texas District Judges for Williamson County:
NOW COMES Plaintiff before the Honorable District Courts for
Williamson County, respectfully complaining of Defendants,
Martin J. Cirkiel and Cirkiel & Associates for cause of action
against them, averring as follows:

Discovery

1. Plaintiff intends that the parties conduct discovery under
level 3, pursuant to Texas Rule of Civil Procedure 190.4, and for
those reasons does hereby move the Honorable District Courts for
Williamson County for entry of appropriate and suitable
Scheduling and Discovery Control Orders.

Jurisdiction and Venue:

2. The amounts in controversy are within the
jurisdictional limits of the District Courts for Williamson County.
At all times relevant hereto the Defendants both maintained
offices for the active practice of law at 901 East Palm Valley
Boulevard, Round Rock, Texas 98664-9401, in Williamson County.



FILED
at _____ o'clock _____ M

NOV 12 2010

Lisa David
District Clerk, Williamson Co., TX.

Venue is proper as all transactions and occurrences out of which this suit arose took place in Travis or Williamson Counties Texas.

Parties and Service:

3. Plaintiff is a domiciled resident adult citizen of the United States and Texas. Service of Process upon Plaintiff is effective by delivery of all pleadings, instruments, documents and discovery upon his counsel of record in this cause, Donald T. Cheatham at his law offices mailing address, P.O. Box 500169, Austin, Texas, 78750-0169, (512) 494-1212 Telephone, (512) 494-1213 Telecopier, and email: cheathamlaw@aol.com.

4. Defendant Martin J. Cirkiel is a domiciled resident adult citizen of the United States, Texas and Williamson County. Cirkiel & Associates is Martin J. Cirkiel's law firm. Service of Process upon either Defendant is effective by delivery of citation, all pleadings, instruments, documents and discovery upon either or both at 901 East Palm Valley Boulevard, Round Rock, Texas 98664-9401.

Facts:

5. Plaintiff readopts, repleads, reasserts and hereby incorporates through this reference herein their entireties in this portion of this Original Petition the allegations in the averments in the foregoing paragraphs 1 through 4 hereinabove, as well as, those hereinafter pled and recited, as though herein originally pled.

6. At all times relevant hereto Defendant Martin J. Cirkiel was licensed to practice law in the State of Texas. An attorney client relationship was formed between Plaintiff and the Defendants.

7. In 2002, Plaintiff retained Martin J. Cirkiel and Cirkiel & Associates to represent him in asserting a complaint for damages for employment discrimination the State of Texas committed against him. In the course of that legal representation, Defendants failed to present adequately and properly to the United States District Court for The Western District of Texas personal records and data evidence relating to Plaintiff, which personal and medical records, as well as, data evidence were essential to his claims. The United States District Court dismissed his case because of the manner in which Defendants handled Plaintiff's case. Plaintiff wished to appeal, which he expressed on several occasions to Defendants. The Defendants failed to timely file a Notice of Appeal or otherwise perfect Plaintiff's appeal to the Fifth Circuit Court of Appeals. Plaintiff learned that the time had passed for him to perfect timely his appeal. Plaintiff attempted unsuccessfully to perfect his appeal *pro se*. As a direct and proximate result of failing to properly present the documents and data evidence, as well as, to then perfect his appeal, Plaintiff lost all of his employment discrimination claims against the State of Texas. As a direct and proximate result, Plaintiff suffered damages for which he herein sues.

8. Plaintiff has fulfilled all conditions precedent necessary for Plaintiff to bring and maintain this suit.

Count I: Negligence

9. Plaintiff readopts, repleads, reasserts and hereby incorporates through this reference in their entirety herein this Count I of this Original Petition the allegations in the averments in the foregoing paragraphs 1 through 8 hereinabove, as well as, those hereinafter pled and recited, as though herein originally pled.

10. At all times relevant hereto the Defendants owed Plaintiff certain legal duties. Amongst these duties for Defendant Martin J. Cirkiel, as he was at all times relevant a lawyer licensed to practice law in the State of Texas, Defendant Martin J. Cirkiel owed Plaintiff the legal duty to perform legal services for him consistent with the standard of practice for a reasonable attorney practicing law at Williamson County, Texas. In the course of performing his legal duties in his representation of Plaintiff before the United States District Court for the Western District of Texas, and because of Defendants' failure to appeal timely Plaintiff's case as aforesaid, Defendant Martin J. Cirkiel failed to perform legal services for Plaintiff consistent with the standard of practice for a reasonable attorney practicing law at Williamson County, Texas. As a direct and proximate result of his breaches of his legal duties to perform legal services for Plaintiff consistent with the standard of practice for a reasonable attorney practicing law at Williamson

County, Texas, Plaintiff has suffered damages, for which he herein sues.

11. As a direct and proximate result of Defendants' breaches of their various legal duties owed to Plaintiff, Plaintiff was further damaged in that he suffered severe and extreme emotional distress, resulting in additional damages, for which he herein sues.

CountII: Breaches of Fiduciary Duties

12. Plaintiff readopts, repleads, reasserts and hereby incorporates through this reference herein their entireties in this Count II of this Original Petition the allegations in the averments in the foregoing paragraphs 1 through 11 hereinabove, as well as, those hereinafter pled and recited, as though herein originally pled.

13. As a matter of law, there was an attorney client relationship between the Plaintiff as the client and the Defendant Martin J. Cirkiel as the attorney.

14. As a matter of law, an attorney licensed to practice law in Texas, who performs legal services on behalf of his client, is a fiduciary of that client.

15. In the course of representing Plaintiff as his attorney, Defendant Martin J. Cirkiel breached his fiduciary duties to Plaintiff, *inter alios*, by claiming attorneys fees and costs to be due to him, when they were not due to him.

16. In the course of representing Plaintiff as his attorneys, in an employment discrimination case, Defendant Martin J. Cirkiel and the Defendant Cirkiel & Associates breached their fiduciary duties to Plaintiff, *inter alios*, in June of 2008, where and when they fraudulently concealed that they had not perfected the appeal as they promised Plaintiff they would.

27. As a direct and proximate result of the Defendant Martin J. Cirkiel's breaches of his fiduciary duties that he owed to his client of full disclosure and candor, Plaintiff Christian Randolph has suffered damages for which he herein sues.

23. As a direct and proximate result of Defendant Martin J. Cirkiel's and Cirkiel & Associates' breaches of their fiduciary duties owed to Plaintiff, Plaintiff was further damaged in that he suffered severe and extreme emotional distress, resulting in additional damages, for which he herein sues.

Damages:

Plaintiff prays for compensatory and actual damages for Defendants' negligence, as well as, compensatory and punitive or exemplary damages for Defendant Martin J. Cirkiel's and Cirkiel & Associates' breaches of their fiduciary duties and the disgorgement by him of any fees that he has collected as the result of acting as Plaintiff's counsel, as well as, pre-judgment and post-judgment interest, attorneys fees and costs, as allowable by law.

WHEREFORE, THE PREMISES CONSIDERED, Plaintiff prays these Honorable Williamson County Texas District Courts grant to him the following relief:

1. That Citations issue and that upon service of process of such upon the Defendants that the Defendants be required to appear and answer this suit;

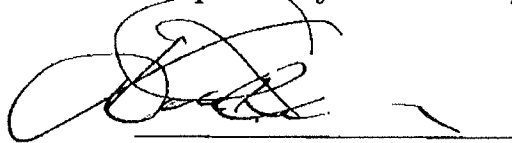
2. That upon verdict favorable to Plaintiff after trial, that judgment consistent with such verdict be entered against Defendant Martin J. Cirkel and Cirkel & Associate in favor of Plaintiff; and,

2. That Plaintiff be granted whatever other relief to which he is entitled in equity and at law, or as the nature of this cause might require, which these Honorable Courts might deem meet, just and proper.

Plaintiff prays for general relief.

Plaintiff demands a trial by jury.

Respectfully submitted,



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